

# Court of Appeals, State of Michigan

## ORDER

Timothy A Manley v Erica Rose Adhikary

Docket No. 356572

LC No. 14-312233-DC

Elizabeth L. Gleicher  
Presiding Judge

Deborah A. Servitto

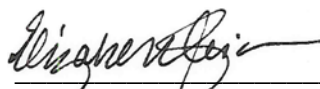
Colleen A. O'Brien  
Judges

The motion for immediate consideration is GRANTED.

Pursuant to MCR 7.205(E)(2), in lieu of granting leave to appeal, the Court orders that this case is REMANDED to the trial court for further proceedings. Before a trial court may modify a previous custody order, the court must first determine that there exists proper cause or a change in circumstances and that modifying custody is in the child's best interests. MCL 722.27(1)(c). If the modification would change the child's established custodial environment, the moving party must present clear and convincing evidence that the modification is in the child's best interest. MCL 722.27(1)(c). "An evidentiary hearing is mandated before custody can be modified, even on a temporary basis." *Grew v Knox*, 265 Mich App 333, 336; 694 NW2d 772 (2005). Thus, as a matter of law, a trial court cannot change custody, even temporarily, without holding a hearing and considering the best-interest factors, MCL 722.23. *Yachcik v Yachcik*, 319 Mich App 24, 49; 900 NW2d 113 (2017); *Mann v Mann*, 190 Mich App 526, 529-532; 476 NW2d 439 (1991). In light of the foregoing, the Court orders that this case is REMANDED for the trial court to either vacate the December 22, 2020, order or hold an evidentiary hearing within 21 days from the date of this order and make the necessary findings regarding proper cause or a change of circumstances, MCL 722.27(1)(c), the child's established custodial environment, and the best-interest factors, MCL 722.23, to support the temporary order. Because the trial court has conducted ex parte conversations with at least one witness, the Court orders that this case be assigned to a different circuit court judge.

The Court also orders that the March 2, 2021, order is VACATED to the extent that the trial court ordered that the minor child's counseling records with Rachelle McGarry be released to the GAL only. The Court orders that the records also be provided to the parties and their attorneys.

The Court retains no further jurisdiction.

  
Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

March 31, 2021  
Date

  
Chief Clerk